

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

NANCY BUCHANAN,	)	No. 63856-4-I
	)	
Appellant,	)	
	)	
v.	)	
	)	
DEPARTMENT OF LABOR	)	
AND INDUSTRIES, STATE OF	)	
WASHINGTON,	)	UNPUBLISHED OPINION
	)	
Respondent.	)	FILED: October 26, 2009
	)	

Ellington, J. — Under current statutes, a mental health condition based upon work-related stress is a proper basis for an industrial insurance claim only when the condition is the immediate result of a sudden, traumatic event. The Department of Labor and Industries denied Nancy Buchanan’s claim on grounds that her condition was not caused by a sudden traumatic event. The superior court affirmed. Because substantial evidence supports the court’s findings, we affirm.

BACKGROUND

Nancy Buchanan worked for Dr. Simon Elloway, a family practitioner, for 23 years. Dr. Elloway usually employed two people: Buchanan and a nurse. Essentially, Buchanan managed the office. She handled scheduling, filing, medication refills, insurance referrals, and medical coding. She also kept the books, sending and paying

bills, balancing the checkbook, and making bank deposits. Her workload increased over the years because Dr. Elloway saw more and more patients. In 2003, it increased abruptly due to new insurance laws. When the nurse was absent, Buchanan performed those duties as well. This was the case from April 2006 through January 2007. In addition to office hours, Buchanan regularly worked during the evening when it was quiet. She never took vacation time despite Dr. Elloway's requests that she do so.

At various times since 1998, Buchanan also held a second or even a third job to support the family when her husband's business was slow. In March 2007, she was working Wednesday and Thursday evenings at a cleaning business.

Each year, Dr. Elloway undertook a two-week medical mission. On March 14, 2007, Dr. Elloway left on a mission to Ecuador. Buchanan customarily arranged coverage for his patients by another physician and worked in the office while he was away. This time Buchanan had to call a doctor who did not usually cover for him. Before he left, Dr. Elloway told her he expected her to complete her billing and get \$10,000 to \$15,000 in the bank by the time he returned.

The next day, Buchanan tried to organize her desk. This turned into an all day project because paperwork had built up over a month and a half. She felt that "[i]t would not be a good situation"<sup>1</sup> for her, Dr. Elloway, and his other employee if she was unable to collect the money. Sitting on the floor among papers, she experienced what she later described as a panic attack.

Buchanan had suffered a similar episode about 15 years before, when she "thought [she] was going nuts"<sup>2</sup> because she was not sure whether she could get

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<sup>1</sup> Report of Proceedings (Nov. 6, 2007) at 45.

everything done at work. Dr. Elloway treated her with vitamin B-12 shots. On a scale of 1 to 10, Buchanan assigned that episode a score of one-eighth (1/8), compared to 9.5 for the later one.

The following morning, Buchanan was unable to go to work due to another panic attack. She did not sleep and engaged in strange behavior. A registered counselor and mental health professional, T.F. Moore, diagnosed psychosis. She was hospitalized and treated by psychiatrist Stephen Lykins for four days. Her chief complaint was stress related to her work. She described herself as a perfectionist and somewhat anxious by nature, and said her mood had been “off”<sup>3</sup> in recent years and her anxiety and mood issues had worsened lately. Dr Lykins diagnosed major depression with anxiety.

Buchanan saw psychiatrist Richard Crabbe and psychiatric nurse practitioner Jeanette Revay for follow-up treatment. Dr. Crabbe diagnosed brief psychotic disorder and posttraumatic stress disorder (PTSD), resulting from years of overwork. Nurse practitioner Revay diagnosed PTSD and major depressive disorder with anxiety, which she attributed to Dr. Elloway's statement of expectations as to the work Buchanan was to do before his return. Revay explained Buchanan perceived his statement as a threat of possible job loss.

Buchanan did not return to work. She filed a claim for industrial insurance benefits. The Department of Labor and Industries (Department) denied the claim and she appealed to the Board of Industrial Insurance Appeals (Board). An industrial

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<sup>2</sup> Id. at 38.

<sup>3</sup> Id. at 10.

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appeals judge (IAJ) issued a proposed decision and order affirming the denial of

benefits, concluding Buchanan's condition was not proximately caused by an industrial injury but arose gradually from the stress of years of overwork. The Board and the superior court affirmed, adopting the IAJ's proposed decision and order as their own.

Buchanan appeals, contending the burden of collecting moneys during Dr. Elloway's absence constituted a sudden and traumatic event and caused her mental breakdown and was therefore an industrial injury for which benefits are authorized.

## DISCUSSION

### *Standard of Review*

The Industrial Insurance Act, Title 51 RCW, provides for superior court review of a Board determination is de novo and that the party seeking review bears the burden of showing that the Board's decision was improper.<sup>4</sup> The trier of fact applies the standards set forth in RCW 51.52.115:

The Board's decision is prima facie correct under RCW 51.52.115, and a party attacking the decision must support its challenge by a preponderance of the evidence. On review, the superior court may substitute its own findings and decision for the Board's only if it finds "from a fair preponderance of credible evidence, that the Board's findings and decision are incorrect."<sup>5]</sup>

In appeals from the superior court, by contrast, we review "whether substantial evidence supports the court's factual findings and then review, de novo, whether the conclusions of law flow from the findings."<sup>6</sup> Substantial evidence is sufficient evidence

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<sup>4</sup> RCW 51.52.115.

<sup>5</sup> Ruse v. Dep't of Labor & Indus., 138 Wn.2d 1, 5, 977 P.2d 570 (1999) (citation omitted) (internal quotation marks omitted) (quoting McClelland v. ITT Rayonier, Inc., 65 Wn. App. 386, 390, 828 P.2d 1138 (1992)).

<sup>6</sup> Watson v. Dep't of Labor & Indus., 133 Wn. App. 903, 909, 138 P.3d 177

to persuade a fair-minded, rational person of the truth of the stated premise.<sup>7</sup>

### *Stress Related Claims*

Disability benefits are available for workers who sustain industrial injuries or develop occupational diseases.<sup>8</sup> An industrial injury is “a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.”<sup>9</sup> An occupational disease is “such disease or infection as arises naturally and proximately out of employment.”<sup>10</sup>

Mental conditions or disabilities caused by stress are, by express direction of the legislature, excluded from the definition of occupational disease.<sup>11</sup> In accordance with this directive, the Department adopted Washington Administrative Code (WAC) 296-14-300(1), which provides the following examples of mental conditions caused by stress that do not constitute occupational diseases: conditions and disabilities resulting from actual or perceived threat of loss of a job, specific or general job dissatisfaction, work load pressures, subjective perceptions of employment conditions or environment, and objective or subjective stresses of employment.

Stress may, however, be compensable as an industrial injury if it results from

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(2006).

<sup>7</sup> Bering v. SHARE, 106 Wn.2d 212, 220, 721 P.2d 918 (1986).

<sup>8</sup> RCW 51.32.010, .180.

<sup>9</sup> RCW 51.08.100.

<sup>10</sup> RCW 51.08.140.

<sup>11</sup> RCW 51.08.142; WAC 296-14-300(1); Boeing Co. v. Key, 101 Wn. App. 629, 632, 5 P.3d 16 (2000).

exposure to a single traumatic event.<sup>12</sup> To support a claim for benefits, therefore, work-related stress must be caused by a sudden, tangible, external traumatic event that produces an immediate result.<sup>13</sup> The event, whether emotional or physical, must also be “of some notoriety, fixed as to time and susceptible of investigation.”<sup>14</sup> The cases clearly hold that emotional distress resulting from events “that unfold over a period of time rather than from a sudden, tangible, traumatic incident that produced an immediate result” does not qualify as an industrial injury.<sup>15</sup>

During most of her treatment and in her testimony before the Board, Buchanan was unable to identify any single event as the cause of her condition. In fact, she testified that other than identifying a different doctor to cover for patients, nothing was out of the ordinary when she left work on March 14.

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<sup>12</sup> WAC 296-14-300(2).

<sup>13</sup> Id.; RCW 51.08.100; Boeing Co., 101 Wn. App. at 633–34.

<sup>14</sup> Rothwell v. Nine Mile Falls School Dist., 149 Wn. App. 771, 781, 206 P.3d 347 (2009) (quoting Lehtinen v. Weyerhaeuser Co., 63 Wn.2d 456, 458, 387 P.2d 760 (1963)).

<sup>15</sup> Boeing Co., 101 Wn. App. at 634 (upholding denial of benefits for PTSD because jury could have found employee’s condition developed over time rather than suddenly due to contact with hostile co-worker); see also Snyder v. Med. Serv. Corp. of Eastern Washington, 98 Wn. App. 315, 988 P.2d 1023 (1999), aff’d, 145 Wn.2d 233, 35 P.3d 1158 (2001) (PTSD allegedly suffered by employee as a result of her supervisor’s intimidating and harassing behavior over a 10 month period was neither an industrial injury nor an occupational disease); Wheeler v. Catholic Archdiocese of Seattle, 65 Wn. App. 552, 829 P.2d 196 (1992), rev’d on other grounds, 124 Wn.2d 634, 880 P.2d 29 (1994) (emotional distress and PTSD allegedly caused by harassment by co-worker over a period of more than a year not an industrial injury); Rothwell, 149 Wn. App. at 781 (PTSD developed over a period of weeks following duties including cleaning up the scene of a suicide, searching for bombs, handling a bag that could have contained an explosive device, and clearing cards and candles away from suicide scene, held not an industrial injury because condition did not result immediately, nor from a single traumatic event, but rather resulted from a series of incidents over a period of a few days).

All the professionals who treated Buchanan observed that she was overworked and that stress had been building for a long time in her life. Mental health counselor Moore attributed her condition to stress caused by her general work situation and opined that something had recently affected her ability to cope with the stress. He could not say whether Dr. Elloway's departure in March 2007 triggered her condition.

Dr. Lykins was uncertain what caused Buchanan's condition, but did not exclude the possibility that she is genetically predisposed to experience major depression in her mid-50s. Several factors, including gradually increasing workload, technological changes, and new regulations may also have contributed.

Dr. Crabbe opined Buchanan's condition was work-related and was not caused by any single event, although it was triggered on a specific date:

Q: Did she have this disorder before March 15th?

A: No. But the trauma that led to what happened on March 15th had been going on all through her working life.

Q: So would you say that she was predisposed for the trauma that occurred?

A: She was predisposed in the sense that she was doing duties and work that was too much for her.

Q: Okay. If her doctor had not left to go to Ecuador, do you believe that she would have suffered this trauma on March 15th?

A: I would say it's unlikely, but again it's a difficult question to answer, because *at some point what happened was going to happen if she had continued working long enough.*<sup>16</sup>

Nurse practitioner Revay was the only witness to tie the cause of Buchanan's condition to Dr. Elloway's instruction to collect a certain sum, which she points out

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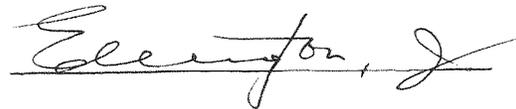
<sup>16</sup> Deposition of Dr. Richard Crabbe (Oct. 22, 2007) at 17–18 (emphasis added).

Buchanan perceived as a threat to her job.

It is on Revay's testimony that Buchanan chiefly relies. But the definitional regulation excludes conditions resulting from perceived threats of job loss. And even assuming Dr. Elloway's directive could be construed as a traumatic event, Buchanan ignores the other testimony that her condition was caused not by Dr. Elloway's demand but by many years of overwork. This dispute in the testimony was for the trier of fact to resolve.<sup>17</sup> The evidence amply supports the court's finding that Buchanan's condition was not caused by a single, sudden traumatic event, but rather by long term work-related stress.

A mental health condition not resulting from a traumatic event does not qualify as an industrial injury. The court did not err.

Affirmed.



WE CONCUR:



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<sup>17</sup> See Spalding v. Dep't of Labor & Indus., 29 Wn.2d 115, 123, 186 P.2d 76 (1947) ("It follows that, in a jury case, the testimony of a single witness may, if the jury believe him, determine the result, although any number of witnesses may have testified to the contrary." (emphasis omitted) (quoting Roellilch v. Dep't of Labor & Indus., 20 Wn.2d 674, 680, 148 P.2d 957 (1944))).